IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO.417 OF 1999

Murlidhar Sukhdeo Gangne
Convict No.C-10431,
Yeravada Central Prison,
Pune - 411 006. .. Appellant.

v/s.

The State of Maharashtra .. Respondent.

Ms.Sharmila Kaushik (appointed) for appellant.

Mr.B.H.Mehta, Additional Public Prosecutor for the State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 10th February, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

The appellant Murlidhar Sukhdeo Gangne was put up for trial for killing his wife Kanhopatra. The Vth Additional Sessions Judge, Pune convicted him of the offence punishable under section 302 of the IPC and sentenced him to suffer life imprisonment. Aggrieved thereby, the present appeal has been preferred by the appellant.

2. The brief recapitulation of the events relating to the incident shall be worthwhile at the outset.

3. One Wada belonging to Chandrakant Shripad Sathe (PW2) is situate at Backward Housing Society in the town Shirur. There are nine rooms in the said Wada. One of the rooms on the western side of the Wada was in occupation of the accused as a tenant where he was residing with his wife (deceased), his mother and the two sons Khandu (PW3) and Bandu (PW5). In the said wada, eight rooms were let out to the different tenants including the accused and one rear side room was lying vacant. The accused was suspecting the character of his wife Kanhopatra and used to quarrel with her quite often. On 16.11.97, there was Jagran-Gondhal at the house of one Kishor Malve. Kanhopatra, the wife of the accused went to attend the said Jagran-Gondhal in the night. The accused did not like it. He went to the house of Kishor Malve and called his wife to return to the house. Kanhopatra, however, did not return with the accused and came back to the house early in the morning on the next day i.e. 17.11.97. The accused quarrelled with his wife Kanhopatra on that account. On 17.11.97 at about 9.00 p.m. Khandu had his dinner and left the house for watching the movie. Bandu-the other son of the accused left for the house of Shivaji Pisave for sleeping there. The accused, his wife Kanhopatra and the mother were in their room. Bandu returned to the house after

watching the movie in the midnight. He called his mother but she did not respond. However, the accused asked Bandu as to what the matter was. He told his father that he wanted the lamp (Chimni). The accused gave Bandu the Chimni by opening the door slightly. Bandu went to sleep in the backside of their room. Early morning on 18.11.97, the accused went to Shirur Police Station and gave the information that he had committed murder of his wife. Sushil Shankarrao Kadam (PW6) recorded the complaint on the basis of the information given by the accused and crime under section 302 of the IPC was registered. The accused took Shankarrao Kadam to the place of incident and showed him the dead body of Kanhopatra. Shankarrao Kadam in the presence of two witnesses prepared the inquest and sent the dead body of Kanhopatra to the hospital for autopsy. Dr.Joseph (since deceased) conducted the postmortem on the body of Kanhopatra. Shankarrao Kadam at the place of incident found two stones, one quilt, one carpet, one piece of shahabad stone stained with blood. He attached the said items, collected the blood stained earth and plain earth from the spot and sent these articles for chemical analysis. During the investigation, Shankarrao Kadam recorded the statements of Khandu and Bandu, both sons of the accused, Ratan Rambhau Waghmare

(PW4) and other witnesses. He arrested the accused on 18.11.97 and attached one Nehru shirt from the person of the accused as it was stained with blood. The said shirt was also sent for chemical analysis.

4. Upon completion of the investigation, Shankarrao Kadam submitted the chargesheet in the Court of Judicial Magistrate, First Class, Ghodnadi. The accused was committed to the Court of Sessions for trial. and charged by the Vth Additional Sessions Judge, Pune on 23.9.98 thus-

> "That you Accused on 18.11.1997 at about 1.30 A.M. or thereabout at Shirur Backward Housing Society did commit murder of your wife viz. Kanhopatra Murlidhar Gangne, by intentionally or knowingly causing her death by assaulting her with stones on her head and thereafter suffocating her with the help of quilt (Rug) and matress and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within my cognizance.
>
> And I hereby direct that you be tried by me on the aforesaid charge."

5. The accused pleaded not guilty.

6. There is no eye witness account but the incriminating conduct and activity of the accused have been proved by examining Shaila Bhagwan Salve (PW1), Chandrakant Shripad Sathe (PW2), Khandu Murlidhar Gangane (PW3), Ratan Rambhau Waghmare

(PW4), Bandu Murlidhar Gangane (PW5), Sushil Shankarrao Kadam (PW6) and Dr. Anilkumar Reddy (PW7) and of course documentary evidence interalia in the form of postmortem notes and chemical analysis reports.

7. To bring home the guilt of the accused for having committed murder of his wife, the prosecution relied upon the following circumstances:-

(one) Motive- that there were frequent quarrels between the accused and his wife as accused was suspecting the character of his wife and that the deceased remained away from the house whole night on 16.11.1997 attending the Jagran-Gondhal against the wishes of the accused;

(two) Last seen- both the accused and his wife were last seen on 17.11.1997 in their room upto 9-9.30 p.m.;

(three) Blood stains on the Nehru shirt which the accused was wearing at the time of his arrest and the said blood stains were of the blood group of his wife;

(four) The information given by the accused that led to the place of incident and discovery of the dead body of his wife; and

(five) Subsequent conduct of the accused.

8. Khandu and Bandu, PW3 and PW5 respectively are the sons of the accused. Both of them stated in the deposition before the court that their father (the accused) used to quarrel with their mother frequently as he suspected the character of their mother. Khandu says that on 16.11.97 his mother went to the house of Kishor Malve to attend Jagran-Gondhal. His father did not like it and went to the place of Kishor Malve to bring her back to their house. His mother did not return with the father and she came back to the house early in the morning on the next day. On 17.11.97, there was quarrel between the accused and his wife but he thought it was the usual quarrel. Chandrakant Shripad Sathe (the landlord) deposed that there used to be quarrel between the accused and his wife. This he came to know from other tenants. Ratan Rambhau Waghmare is the brother of the deceased. He deposed that the accused used to suspect the character of Kanhopatra and would illtreat her. The evidence of the two sons Khandu and Bandu is creditworthy and the suggestion by the defence that they have sought to falsely implicate the accused at the behest of their maternal uncle Ratan Rambhau Waghmare hardly has any merit. Why should the two sons falsely implicate their father?

The deposition of the landlord is also consistent with the deposition of two sons in respect of the quarrels between the accused and his wife. That on 16.11.97 (a day before the incident took place), Kanhopatra went to attend Jagran-Gondhal at the house of Kishor Malve against the wishes of the accused and because of that there was quarrel between the accused and the deceased on the date of incident is established by the evidence of one of the sons Khandu. The motive is, thus, established by the prosecution.

9. It is the evidence of Khandu that on 17.11.97 at about 9.00 p.m. he took his dinner and went out for watching the movie. His brother Bandu had gone to the house of Shivaji Pisave for sleeping there. His father, the mother and the grand mother remained in the house. That the accused and the deceased were last seen together at 9.00 p.m. on 17.11.97 in their room is established by the evidence of the son Khandu.

10. Khandu returned to the house in the midnight at about 12.03 a.m. (18.11.97). On reaching the house, he called his mother but she did not respond. However, his father- the accused asked him as to what the matter was and when he told the

accused that he needed lamp (chimni), the accused opened the door slightly and gave him the lamp. This evidence of Khandu as a matter of fact goes unchallenged.

11. That the accused led Shankarrao Kadam (PW6) to the place of incident and there the dead body of Kanhopatra was found, is established from the evidence of PW6. The body of Kanhopatra was lying in the pool of blood in one of the rear rooms of Wada which was lying vacant. This is proved by the evidence of the landlord and the investigating officer. In his statement under section 313 Cr.P.C., there is no explanation by the accused to this vital incriminating circumstantial evidence produced by the prosecution.

12. The prosecution has proved that at the time of his arrest, the accused was wearing a Nehru shirt. The said shirt had blood stains. The C.A. report establishes that the blood stains found on the shirt were of 'B' Group which was the blood group of the deceased. There is no explanation of any nature whatsoever by the accused to this aspect.

13. The amicus curiae contended that absence of examination of the mother of the accused who was

admittedly present in the house cast serious doubt about the prosecution version. She posed the question if the incident had taken place in the rear room which was lying vacant then why blood stains were found in the room of the accused. She would contend that the Wada had about eight tenants and in the dead of night if there was any physical assault by the accused on the person of the deceased, she could have raised cry and that could have been noticed by the neighbours.

14. As to why the mother of the accused was not examined by the prosecution is explained by the investigating officer in his deposition. The investigating officer PW6 deposed that the statement of the mother of the accused was not recorded as it was not found to be helpful to the prosecution. We find nothing wrong with that, particularly, in the light of the nature of the evidence that has already been produced by the prosecution.

15. It is true that few blood stains found in the room of the accused do not get explained by the prosecution evidence but that pales into insignificance in the light of the circumstantial evidence that has been put forth by the

prosecution. Secondly, as a matter of fact, it was for the accused to explain the blood stains found in his room.

16. The postmortem on the dead body of Kanhopatra was conducted by Dr.Joseph. Unfortunately, by the time, the evidence came to be recorded, he was dead. Dr.A.K. Reddy (PW7) accordingly, was examined by the prosecution and he proved the postmortem notes of Dr.Joseph. The postmortem notes depict the following injuries on the dead body of Kanhopatra:-

1. CLW over the left face 1 inch medial to the right ear having size 1.1/2 x 1 inch.
2. CLW over the left temporal region half inch x one c.m.
3. Right tragus of the ear was cut, CLW having 1 inch long.
4. Fracture of the right temporal region.
5. Nail marks were seen infront of the neck.

All the aforesaid injuries were found antemortem.

On internal examination, Dr.Joseph found the following internal injuries:-

1. Depressed fracture having size of 2 x 1.3/4 inch oval shape irregular margins and the said injury was on right temporal region.

2. Brain had come out through the fracture.

17. In the light of the aforesaid external and internal injuries, it was the opinion of Dr.Joseph in the postmortem notes that the cause of death of the deceased was due to asphyxia and respiratory failure due to the head injury. The suggestion given to Dr.A.K.Reddy in the cross-examination that the head injury mentioned in the postmortem notes could be caused if anybody falls on the heap of stones and answer of Dr.Reddy in the affirmative does not help the defence. The dead body of Kanhopatra was found in the room. There was no heap of stones. On the other hand, the case of the prosecution is that the accused assaulted his wife by stones. These stones were stained with blood. These were seized from the place of occurrence and sent for chemical analysis. In the C.A. report, the said stones were found to have human blood of group 'B'. The medical and forensic evidence, thus, fully supports the prosecution case.

18. Having considered the aforesaid evidence, we hold unhesitatingly that the aforesaid

incriminating circumstances create a network that wholly and solely implicates the accused of having committed murder of his wife and excludes all probability of his innocence.

19. The argument of the learned amicus curiae that even if the case of the prosecution is accepted as it is, it only establishes that the accused intended to cause bodily injury to his wife and that he never intended to cause her death, is noted to be rejected. The medical evidence that we have referred to above depicts that she sustained depressed fracture having size of 2 x 1.3/4 inch oval shape on right temporal region and brain had come out through the fracture. The force with which the assault was committed and the injuries were sustained by the deceased negates the submission of the learned amicus curiae that the accused only intended to cause injury to his wife and rather it reflects the intention of the accused that he intended to kill his wife.

20. The conviction of the accused for the offence punishable under section 302 of the IPC does not call for interference.

21. In the result the appeal fails and is dismissed.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)